

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Southwest Power Pool, Inc.	Docket Nos. RT01-34-000 and RT01-34-002
Entergy Services, Inc.	Docket No. RT01-75-000 and RT01- 75-003
American Electric Power Service Corporation	Docket No EC01-94-000
Oklahoma Gas and Electric Company	Docket No. EC01-100-000
Western Resources Inc. and Kansas Gas and Electric Company	Docket No. EC01-103-000
Midwest Energy, Inc.	Docket No. EC01-106-000
Kansas City Power & Light Company	Docket No. EC01-108-000
The Empire District Electric Company	Docket No. EC01-109-000
Southwestern Public Service Company	Docket No. EC01-111-000
Cleco Power LLC	Docket No. EC01-113-000

ORDER REJECTING RTO FILINGS

(Issued July 12, 2001)

On October 13, 2000, the Southwest Power Pool, Inc. (SPP) submitted a proposal, in Docket No. RT01-34-000, seeking authorization to establish itself as a Regional Transmission Organization (RTO), pursuant to the Commission's characteristics and functions for RTOs, set forth in Order No.

2000.¹ In a companion filing made on October 16, 2000, in Docket No. RT01-75-000, Entergy Services, Inc., on behalf of the Entergy Operating Companies (collectively, Entergy),² requests authorization to create an independent, for-profit transmission company (Transco) to operate within the umbrella of and to operate under the oversight of the SPP RTO. Entergy also seeks approval, pursuant to section 203 of the Federal Power Act (FPA)³ to transfer the transmission assets of the Entergy Operating Companies to the Transco. In a subsequent filing, made by Entergy on December 29, 2000, Entergy seeks approval, pursuant to section 205 of the FPA,⁴ for the rates and services that would govern transmission service over the Transco's system.

Because the proposed RTO fails to satisfy the scope and regional configuration requirements set forth in Order No. 2000, we will reject SPP's and Entergy's RTO filings. We will also dismiss without prejudice the section 203 filings pursuant to which transmission facilities would have been transferred to the RTO and to the Transco. In an order to be issued concurrently, we also will direct SPP and Entergy to participate in mediation with others who have proposed RTOs in the southeast for the purpose of forming a single RTO in the southeast.

Background

A. SPP and Entergy

SPP is an Arkansas non-profit corporation with its principal place of business in Little Rock, Arkansas. SPP currently has 13 transmission-owning members and serves more than 6.5 million customers in a 400,000 square-mile area covering all or part of the states of Arkansas, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, and Texas. SPP's members include 13 investor-owned utilities, seven municipal systems, eight generation and transmission cooperatives, three state authorities, one federal power marketing agency, one wholesale generator, and 17 power

¹Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), petitions for review pending sub nom., Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir.).

²The Entergy Operating Companies include Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

³16 U.S.C. § 824b (1994).

⁴16 U.S.C. § 824d (1994).

marketers. In 1968, SPP became a regional reliability council, within the North American Electric Reliability Council (NERC). SPP began administering regional transmission service on June 1, 1998.⁵

Entergy provides general executive and administrative services to the Entergy Operating Companies, which own and operate generation, transmission, and distribution facilities in Arkansas, Louisiana, Mississippi, and Texas. The Entergy transmission system comprises approximately 15,000 miles of transmission lines and extends from the southeastern portion of Missouri to the southern-most part of Louisiana. It includes the western part of Mississippi and the southeastern part of Texas. Entergy was formerly an SPP member, but withdrew from membership in 1997. Effective September 1, 2000, Entergy rejoined SPP as an associate member. However, for reliability purposes, it remains a member of the Southeastern Electric Reliability Council (SERC).

B. The May 17, 2000 Order

SPP previously sought recognition as an independent system operator (ISO) in Docket No. EL00-39-000. In its filing in that proceeding, SPP claimed that it satisfied the Commission's ISO principles, as set forth in Order No. 888,⁶ and that it also satisfied the Commission's requirements for RTOs, as set forth in Order No. 2000.

In an order issued May 17, 2000,⁷ we found that SPP's regional configuration, which excluded its former members, such as Entergy, was inadequate.⁸ We also found that SPP's proposal failed to comply with Order No. 2000's requirement that an RTO proposal be accompanied by section 203 applications requesting transfer of control of the public utilities' jurisdictional transmission assets to the

⁵Southwest Power Pool, Inc., 82 FERC ¶ 61,267, order deferring effective date, 82 FERC ¶ 61,285 (1998).

⁶Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group., *et al.* v. FERC, 225 F.3d 667 (D.C. Cir. 2000), cert granted, 69 U.S.L.W. 3574 (Nos. 00-568 (in part) and 00-809) and cert denied, *id.* (No. 01-800) (U.S. Feb 26, 2001).

⁷Southwest Power Pool, Inc., 91 FERC ¶ 61,137 (2000) (May 17 Order).

⁸*Id.* at 61,350.

RTO.⁹ In addition, we noted our finding in Order No. 2000 that an RTO must have operational authority for all transmission facilities under its control. Accordingly, we found that Section 2.1.1 of SPP's Membership Agreement, which provided that "SPP shall not operate or direct the operation of the Tariff Facilities except in its role as Security Coordinator," failed to satisfy the requirements of Order No. 2000.¹⁰

The Commission concluded that SPP's ISO/RTO proposal required modification if it were to meet the standards necessary for recognition as an RTO. Among other things, we directed SPP to address in any new proposal "whether it is feasible for SPP to join with other groups engaged in forming RTO's in the region."

C. March 28, 2001 Order

In an order issued on March 28, 2001,¹¹ we addressed certain aspects of SPP's and Entergy's current filings, including the issue of scope. We found that we could not then approve the scope and regional configuration of the SPP RTO because SPP members had failed to comply with previous orders, and because SPP failed to discuss the feasibility of a broader RTO with other entities. 94 FERC at 62,290. The Commission noted that several intervenors were urging the Commission to think big and rather than simply approving the transformation of existing utilities into for-profit transmission companies to require utilities to forge truly regional RTOs. 94 FERC at 62,295.

The Commission noted that while the proposed SPP RTO would serve a fairly large, contiguous geographic region, which is highly interconnected and has a long history of cooperation as a reliability council and earlier as a power pool, the bulk power sales and purchase figures in the region in which SPP and Entergy operate indicate that natural markets extend beyond the presently proposed SPP RTO borders. We specifically mentioned SERC and the Midwest. We also noted that, in the May 17 Order, we directed SPP to address whether it was feasible to join with other groups forming RTOs in the regions, but that SPP's filing had failed to address this issue adequately. We concluded that the SPP RTO Partnership, with its inclusion of Entergy, represents progress, but that it does not accommodate the full markets we know to exist. We stated that, before we could approve the RTO, Applicants would have to persuade us that they had been diligent in complying with Order No. 2000. We specifically directed SPP and Entergy, either separately or together, to engage in serious discussion with neighbors concerning joining currently proposed RTOs. 94 FERC 62,296. We directed SPP and

⁹Id. at 61,525-26.

¹⁰SPP's Membership Agreement, as it relates to SPP itself (not SPP as an RTO), was previously accepted by the Commission in Southwest Power Pool, Inc., 89 FERC ¶ 61,284 at 61,895-96 (1999).

¹¹Southwest Power Pool, Inc., 94 FERC ¶ 61,359 (2001).

Entergy to file a joint report no later than May 25 on the progress made in discussions to join an expanded RTO. Id.

We further noted that no SPP transmission owner had committed to the SPP RTO Partnership by filing a section 203 filing, and that only a few had committed to join the RTO. We further noted that many critical coordination details remained to be worked out concerning the MOU, the main document of agreement between SPP and Entergy.

D. May 25 filings

SPP and Entergy each submitted a filing on May 25, 2001, reporting on progress made to expand their RTOs. As an attachment to SPP's report was evidence that SPP claims demonstrates that its proposed RTO satisfies the Commission's scope and configuration requirements. SPP also attached evidence explaining SPP's further discussions with adjoining utilities regarding efforts to expand the RTO or to join with others forming an RTO. Finally SPP described progress in agreeing to operating protocols between SPP and Entergy, and submitted documents showing work done on congestion management and balancing systems. SPP says that the effort to expand the RTO met with some success with the addition of Cleco Power LLC (Cleco) to the proposed RTO and with the decision by SPP, the Midwest ISO and Alliance to jointly hire an independent market monitor. SPP also says that it will continue to work on seams issues with the Midwest ISO and Alliance. Finally SPP stated that jurisdictional transmission owners in SPP would file applications pursuant to section 203 of the FPA to transfer control of their transmission facilities.

In its report, Entergy described its efforts to expand the scope of the SPP RTO and newly-agreed-to details of its MOU with SPP. Entergy states that based on its discussions with neighboring entities following the March 28 order, it believes that "while there is a good chance for the negotiation of seams or coordination agreements, there does not appear to be an opportunity at this time to develop a combined regional transmission organization that extends beyond the borders of the current SPP members and Entergy."

E. Section 203 filings

A number of section 203 filings have been filed to transfer control of transmission facilities to the proposed RTO or Transco. Entergy included a request to transfer transmission facilities to its Transco in its filing in Docket No. RT01-75-000. In addition, applications were filed to transfer control of jurisdictional facilities to SPP: American Electric Power Service Corporation filed in Docket No. EC01-94-000; Oklahoma Gas and Electric Company filed in Docket No. EC01-100-000; Western Resources Inc. and Kansas Gas and Electric Company filed in Docket No. EC01-103-000; Midwest Energy, Inc. filed in Docket No. EC01-106-000; Kansas City Power & Light Company filed in Docket No. EC01-108-000; Empire District Electric Company filed in Docket No. EC01-109-000;

Southwestern Public Service Company filed in Docket No. EC01-111-000; and Cleco filed in Docket No. EC01-113-000.

F. Notices and Responsive Pleadings

The Commission granted intervention to those parties who requested intervention in response to the Commission's notices of SPP's and Entergy's RTO filings. 92 FERC at 62,292-93.

Notice of SPP's May 25 filing was published in the Federal Register,¹² with interventions, comments, or protests due on or before June 18, 2001. Notice of Entergy's May 25 filing was published in the Federal Register,¹³ with interventions, comments, or protests due on or before June 18, 2001.

Interventions were filed by the parties noted in the Appendix to this order. Protests and comments were filed by the parties noted below in our discussion section of this order, and as noted in the Appendix.

Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁴ the state commission's notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed these pleadings parties to those proceedings to which their interventions relate.

B. Scope and Regional Configuration

¹²66 Fed. Reg. 32,944 (2001).

¹³66 Fed. Reg. 31,629 (2001).

¹⁴18 C.F.R. § 385.214 (2000).

In Order No. 2000, we held that an RTO must serve an appropriate region, *i.e.*, a region of sufficient scope and configuration to permit the RTO to effectively perform its required functions and to support efficient and non-discriminatory power markets.¹⁵

Comments

Concerning SPP's conclusion that the SPP/Entergy RTO scope is adequate, Arkansas Cities argue that SPP's evidence on historical trading patterns is misleading because it is based on time periods when pancaked rates have been in effect and when retail competition has been non-existent. Changes to these two factors will likely cause new trading patterns to develop. Arkansas Cities also notes that Dr. Patton's examination of wholesale price arbitrage and price convergence between SPP and Entergy indicates that an RTO limited to this region would achieve limited benefits beyond the current situation. Thus, Arkansas Cities reasons that it would be more logical to look to a larger RTO to achieve the goals set by the Commission.

Dynegy questions SPP's analysis of wholesale markets because certain transactions have been excluded that should have been made part of the analysis.

Golden Spread requests that the Commission direct SPP to augment its proposal on RTO scope by obtaining a firm commitment from SPS to transfer operational control of SPS's transmission facilities to SPP.

Industrial Consumers argues that the Commission should convene a technical conference to promote consolidation of the RTO proposals in the Southeast.

Lafayette says that the addition of Cleco brings the SPP RTO closer to the criterion for scope and regional configuration described in Order No. 2000.

Louisiana Generating requests that the Commission reject the compliance filings as not satisfying scope and configuration. Louisiana Generating does not agree with the conclusions of Dr. Patton's study because that study assumes that trading between SPP and Entergy is frictionless, which it is not. RTO boundaries should not be based on historical trading patterns where conditions were different from what is expected once RTOs are formed. The SPP RTO should not be approved until a broader scope is proposed. Also, Louisiana Generating argues that the Commission should not approve the detailed protocols regarding the operation of the RTO, before the scope and configuration of the RTO has been determined.

¹⁵Order No. 2000 at 31,079. We note that the Commission has indicated in other orders considered contemporaneously with this order that it intends, in the near future, to evaluate the importance of standardizing generation interconnection procedures.

The City Council of New Orleans argues that the proposed scope does not meet the requirements of Order No. 2000 and that the Commission should require SPP and Entergy to explore a combination with the Midwest ISO.

The Oklahoma Corporation Commission agrees with the results of SPP's analysis of wholesale markets and supports the proposed SPP RTO regional configuration.

Williams recommends that the Commission not approve the SPP/Entergy RTO proposal but rather order expedited discussions between the SPP RTO participants and GridSouth or GridFlorida, with the objective of their being members of one or the other, and include Southern Companies and TVA in these discussions.

Discussion

In response to our March 28 Order, SPP held discussions with Southern Companies, TVA, Midwest ISO, Crescent Moon, Associated Electric Cooperative, Sunflower Electric Power Corporation, Alliance, UtiliCorp United and Cleco about expanding the scope and regional configuration of the proposed SPP RTO. Of those with whom SPP had discussions, Cleco agreed to join the proposed RTO. Entergy's response to the March 28 Order included discussions with the Southern Companies and TVA.

Other than the addition of Cleco, who had planned to participate in the RTO anyway, the above discussions have led to no increase in the SPP RTO scope and regional configuration. What is unclear from the compliance filings is the nature and intensity of the discussions undertaken by SPP and Entergy. As we stated in the March 28 Order:

Before we grant final approval, the Applicants must persuade us that they have been diligent in complying with Order No. 2000 for RTO regions. We want to see evidence of serious efforts to form RTOs that combine a number of current RTO proposals to form major RTO regions in the South, in the East, in the Midwest, and in the West. Accordingly, we direct SPP and Entergy (either separately or together) to look for opportunities for an expanded RTO. To do this they must engage in serious discussions with their neighbors concerning the possibility for combining with currently proposed RTOs and concerning the addition of heretofore uncommitted transmission owners. ^[16]

The compliance filings do not describe particularly intense or serious discussions. In fact, the descriptions give the impression that most of the discussions were somewhat casual in nature. There is

¹⁶94 FERC 61, 296.

no description of any type of negotiation or give-and-take between either SPP or Entergy and any other entity.

Also missing in the recounting of these discussions is a full description of what problems were encountered that prevent some new combination of entities that would satisfy the Commission's scope and regional criterion. The filings only describe a lack of interest on the part of other proposed RTOs or other utilities. Nowhere is there a description of what changes could be made or what could be fixed in order to accommodate combination.

SPP did provide an analysis to show that the proposed RTO already encompasses a natural wholesale electric market. We realize that, with Entergy's history with SPP, wholesale activities within the proposed RTO will outweigh sales to other regions. In establishing RTOs, however, we are looking beyond sales under today's conditions. As Arkansas Cities points out, trading patterns would be different in the absence of rate pancaking and once retail competition occurs.

We find, as we did in the March 28 Order as well as other recent orders, that, in order to meet the scope and regional configuration criterion of Order No. 2000, the RTO serving this region will need to be larger than what has been proposed. We are looking to form a single RTO in the Southeast and the proposed SPP RTO does not give us confidence that the current proposal is moving in that direction. It will take more than "being in contact" with potential partners and "keeping the lines of communication open."

We do give credit to SPP and Entergy for combining efforts to propose an RTO to cover their respective areas and we find that the joint proposal does contain a number of attributes that can be carried forward to future proposals for a more appropriate region. However, it does not do enough. Accordingly, we find that the scope and regional configuration of the proposed SPP RTO does not satisfy Order No. 2000.¹⁷

The Commission has been attempting to facilitate the development of large, regional transmission organizations reflecting natural markets since we issued Order No. 2000. We favor the development of one RTO for the Northeast, one RTO for the Midwest, one RTO for the Southeast and one RTO for the West. Through their independence from market participants, RTOs can ensure truly non-discriminatory transmission service and will instill confidence in the market that will support the billions of dollars of capital investment in generation and demand side projects necessary to support a robust, reliable and competitive electricity marketplace. RTOs are the platform upon which our expectations of the substantial generation cost savings to American customers are based.

¹⁷We will, accordingly, also deny the section 203 filings listed in the caption, above, without prejudice to their being refiled with an RTO application of broader regional scope.

While there will be "start up" costs in forming a larger RTO, over the longerterm, large RTOs will foster market development, will provide increased reliability, and will result in lower wholesale electricity prices. However, these savings will be delayed, perhaps significantly, if RTOs are permitted to develop incompatible structures and systems, or if we approve RTOs that do not encompass wholesale market trading patterns. Accordingly, we today direct the parties in the Northeast and Southeast to mediation, under an expedited schedule.

In order to successfully encompass the natural market for bulk power in the Southeast, it is necessary that Southeastern transmission owners combine to form one Southeastern RTO. To facilitate this, we are issuing, concurrent with this order, a separate order that directs the participants in these proceedings and the participants in the proceedings in Docket Nos. RT01-77-000 (Southern) and RT01-74-000 (GridSouth), to participate in settlement discussions for 45 days before a mediator and appropriate consultants to assist and provide advice during the mediation.¹⁸ The order directing mediation requires the mediator to file a report within 10 days after the 45-day period, which includes an outline of the proposal to create a single Southeastern RTO, milestones for completion of intermediate steps and a deadline for submitting the joint proposal. We intend to review the report and may issue a subsequent order.

We encourage the state commissions to participate in these efforts. We believe their participation will further the resolution of this matter. Likewise, we encourage (but do not require) participants in the proceeding in Docket No. RT01-67-000 (GridFlorida LLC) to participate in this mediation proceeding as well.

As discussed above we are instituting a proceeding to facilitate formation of a single RTO in the Southeast. However, it may be that the current combination of SPP and Entergy may be hampering efforts to interest other players in a better combination. It may also be that, without the current rate pancaking and once retail competition occurs, the natural market for SPP and the natural market for Entergy will not be the same natural market. It may be that SPP's will be in the Midwest, while Entergy's will be in the Southeast. Thus, it may be that SPP and Entergy should move in different directions, with Entergy becoming part of the RTO forming in the Southeast, and SPP joining with others to form a region-wide RTO in the Midwest. Nevertheless, we will direct SPP to participate in the mediated settlement discussions directed above. If SPP and the other participants in the settlement proceedings determine that SPP does not belong in the RTO that will be formed as a result of those settlement proceedings, SPP should then look to the Midwest.

The Commission orders:

¹⁸See Regional Transmission Organizations, 96 FERC ¶ ___, (2001) (Docket No. RT01-100-000).

(A) The RTO filings submitted by SPP and Entergy are hereby rejected.

(B) The applications filed in the above dockets for authorization to transfer control of jurisdictional assets under section 203 of the Federal Power Act are hereby denied, without prejudice, as premature.

By the Commission. Commissioner Massey concurred with a separate statement attached.

(S E A L) Commissioner Breathitt dissented in part with a separate statement attached.

David P. Boergers,
Secretary.

Appendix

Interventions, Comments and Protests in Docket No. RT01-34-002

Louisiana Generating LLC (Protest and Comments)

Williams Companies, Inc. (Comments in opposition to approval)

Sunflower Electric Power Corporation (Intervention)

Louisiana Energy Users Group (Intervention)

Oklahoma Corporation Commission (Intervention and Comments)

Enron Power Marketing, Inc.(Comments)

American Forest & Paper Association (Comments)

Arkansas Cities (Intervention and Comments)

Dynegy Inc. and Coral Power, L.L.C. (Protest)

Electric Power Supply Association (Protest)

Golden Spread Electric Power Cooperative, Inc. (Protest)

Industrial Consumer Intervenors (Protest)

Lafayette Utilities System, the Louisiana Energy and Power Authority and the Municipal Power Agency of Mississippi (Intervention and Protest)

Council of the City of New Orleans, Louisiana (Protest)

Nucor-Yamato Steel Company, Inc. and Nucor Steel Arkansas (Intervention)

Interventions, Comments and Protests in Docket No. RT01-75-003

Williams Companies (Comments in Opposition)

Louisiana Generating LLC (Protest and Comments)

Louisiana Energy Users Groups (Intervention and Protest)

Enron Power Marketing (Comments)

Arkansas Public Service Commission (Comments)

Industrial Consumer Intervenors (Protest)

American Forest & Paper Association (Comments)

Arkansas Cities (Intervention and Comments)

Dynegy Inc. and Coral Power, L.L.C. (Protest)

Clarksdale Public Utilities Commission (Protest)

Lafayette Utilities System, the Louisiana Energy and Power Authority and the Municipal Power Agency of Mississippi (Intervention and Protest)

Council of the City of New Orleans, Louisiana (Protest)

Nucor-Yamato Steel Company, Inc. and Nucor Steel Arkansas (Intervention)

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Cleco Power LLC	Docket No. EC01-113-000

(Issued July 12, 2001)

MASSEY, Commissioner, concurring:

In orders issued today addressing the Northeast RTO proposals¹ and the Southeast RTO proposals,² the Commission adopts as its firm objective a single RTO for the Northeast, one for the Southeast, one for the Midwest, and one for the West. We state

¹Docket Nos. RT01-2-000, RT01-98-000, RT01-10-000, RT01-95-000, RT01-86-000, and RT01-94-000.

²Docket Nos. RT01-74-002 and -003, RT01-77-000, RT01-34-000 and -002, and RT01-75-000 and -003.

this objective for four RTOs covering the entire nation. With this clear statement, we at long last provide much needed guidance to the industry for getting RTOs in place and delivering their benefits to the nation's electricity consumers. This guidance is long overdue. I have long advocated providing such guidance, and believe we could have saved valuable time by articulating it eighteen months ago instead of now. But better late than never. I am pleased that we are moving ahead today.

We show a new resolve today also by directing the parties in the Northeast and those in the Southeast to formal mediation in order to establish a plan for forging a single RTO for their regions and a timetable for doing so. I strongly support this approach. A skilled, neutral judge will help resolve the tough issues that will surely arise and will be able to provide trusted advice to the Commission if and when we need to step in. If this job is going to get done in due time, the presence of a mediator is absolutely necessary.

While I am very pleased with the resolve we are showing in the Northeast and the Southeast, I am disappointed that we are not applying that same resolve in all regions. To facilitate the timely development of the single Midwest RTO, which our orders today state as a clear objective, I would direct Alliance, the Midwest ISO, and the Southwest Power Pool to a mediation proceeding with the same objective and timetable as that for the Northeast and Southeast RTOs. The settlement that we approved between the Alliance and Midwest ISO was a bold step in the right direction, but those institutions should have been directed toward a single RTO from the outset. And SPP would add even greater scope to the Midwest RTO. In this order, we direct SPP to the Southeastern mediation but recognize they may well belong in the Midwest. I believe they do and we should provide now the needed direction and forum for SPP to accomplish its RTO responsibilities. Although I am pleased with the progress we make today, I am somewhat disappointed that we once again miss a golden opportunity to achieve in the Midwest what we insist upon in the Southeast and the Northeast.

Therefore, I concur with today's order.

William L. Massey
Commissioner

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Breathitt, Commissioner, dissenting, in part:

Since the Commission began promoting RTOs as a means to remove barriers and impediments to wholesale electricity markets, I have been fully committed to the goal of implementing RTOs. However, I am dissenting, in part, to express my objections to specific language in this order and other RTO orders on today's agenda supporting the creation of four RTOs in the country. I agree with the majority's claim that the Commission has been attempting to facilitate the development of large RTOs reflecting natural markets since we issued Order No. 2000. That was our stated goal and one that I have actively pursued. However, today's orders go further by stating that the Commission "favors the development of one RTO for the Northeast, one RTO for the Midwest, one RTO for the Southeast, and one RTO for the West." I do not necessarily favor such development.

When the Commission deliberated over how to attain our mutual objective of RTO formation, we decided to adopt an open collaborative process that relied on voluntary regional participation. The intent was to design RTOs so that they could be tailored to the specific needs of each region. We specifically declined to propose fixed or specific regional boundaries under section 202(a) of the FPA. Instead, we concluded, as a matter of policy, that we would not attempt to draw boundaries, based upon our conviction that transmission owners, market participants, and regulators in a particular region have a better understanding of the dynamics of the transmission system in that region, and that they should propose the appropriate scope and regional configuration of an RTO. We did not specifically endorse one particular scheme of RTO configuration, but opted instead to establish appropriate guidelines to aid in RTO development. In fact, our regulation requires only that an appropriate region is one of sufficient scope and configuration to permit an RTO to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.

Today's order represents a dramatic departure from the approach we pursued in Order No. 2000 to the extent that it directs the formation of four specific RTOs. Just as some commenters to our RTO rulemaking feared, the Magic Markers have come out, and the boundaries are being drawn with little regard to the status and timing of RTO formation efforts in various regions of the country. This was not my intent at the time we issued Order No. 2000; and the events since we issued Order No. 2000 do not compel me to embrace this policy shift. Parties have spent many hours and countless resources in negotiations, collaborations, and complicated business strategy sessions to develop reasonable RTO approaches. The impact of the majority's directive that these four RTOs be formed could be to render these efforts useless and force parties to begin the difficult and time-consuming process anew. For example, the Midwest ISO -Alliance settlement, which the Commission approved and which represented a tremendous effort by many parties, could unravel.

If the majority believes that the Commission should depart from the basic philosophies embodied in Order No. 2000, then I believe it would be only appropriate to initiate a formal notice-and-comment rulemaking proceeding so that we could make a reasoned decision informed by the views of the stakeholders in this process – state commissions, chief among others.

Finally, I do not adopt the majority's assertion that forming larger RTOs will result in lower wholesale electricity prices. This is a laudable goal, and as such, I embrace it. As a general proposition, Order No. 2000 encouraged the development of

large RTOs. However, the promise of lower wholesale electricity prices is one that I, as a federal official, am not willing to make to consumers at this time.

For these reasons, I respectfully dissent.

Linda K. Breathitt
Commissioner